

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CHARLES RUSSELL;
CHRISTOPHER HUBBARD;
HARRY WHITE; CARL
SMELLEY; SHANE CARLINE;
and COURTNEY WHITE,
individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

WAYNE COUNTY, MICHIGAN;
BENNY NAPOLEON, in his official
capacity as Sheriff of Oakland County;
DANIEL PFANNES, in his official
capacity as the Undersheriff for the
Wayne County Sheriff's
Office; ROBERT DUNLAP, in his
official capacity as Chief of Jails and
Court Operations; JAMES E. DAVIS,
in his official capacity as Deputy Chief
of Jail Operations,

Defendants.

Case No. 20-cv-11094

**PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' EMERGENCY
MOTION FOR EXPEDITED CONSIDERATION OF PLAINTIFF'S
MOTION FOR TEMPORARY RESTRAINING ORDER**

Despite “the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic,” *U.S. v. Stephens*, ___ F. Supp. 3d ___, 15 Cr. 95 (AJN), 2020 WL 1295155, at *2 (S.D.N.Y. Mar. 19, 2020), the recognition by courts and government that “[o]ur world has been altered with lightning speed,” *see, e.g., Thakker v. Doll*, ___ F. Supp. ___, 2020 WL 1671563, at *9 (M.D. Pa. Mar. 31, 2020), and the uniform understanding that “the choices we now make must reflect this new reality,” *id.*, Defendants ask this Court to refrain from hearing an emergency motion that alleges federal constitutional violations and raises serious issues of law and fact. Instead, Defendants want to defer to an informal, ad-hoc process that appears to be tangential to a consent order entered as part of a jail overcrowding lawsuit that dates back to 1971. This informal process has proved insufficient in providing the relief Plaintiffs seek. Therefore, this Court should enter Plaintiffs’ proposed temporary restraining order immediately, or, in the alternative, hear argument on Plaintiffs’ motion as soon as possible.

Federal courts have a “*virtually unflagging obligation . . . to exercise the jurisdiction given them.*” *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800, 817 (1976) (emphasis added). The default rule is that “the pendency of an action in the state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction.” *Id.* Abdicating of the obligation to decide cases (especially those that present urgent federal constitutional questions) is

justified only in “exceptional circumstances.” *Id.* at 813. Defendants have failed to demonstrate that such an “exceptional circumstance” is present here.

In asking this Court to take the extraordinary measure of abstaining from hearing an urgent federal constitutional question, Defendants fail to provide any evidence upon which this Court and Plaintiffs’ counsel could rely. Plaintiffs are unable to ascertain what measures Defendants claim to be taking, whether and how those measures are required by the state-court consent order, or why Defendants believe those measures fully cure the federal constitutional violations described in Plaintiffs’ Complaint and accompanying declarations. Further, Defendants have not disclosed critical information—in their opposition or to the public—about the specific criteria being used to decide who should be considered for administrative relief, nor have they articulated the specific legal or factual definitions it uses to decide who will be released.

Regardless, Defendants’ response to the COVID-19 crisis has been dangerously insufficient, and substantial harm remains to be remedied, as Plaintiffs’ Emergency Motion makes clear. Although Defendants have released *some* detainees, Doc. 10 at 2, medically vulnerable people who are at particularly grave risk of death or serious illness from COVID-19—including four of the named Plaintiffs—are still detained in the Jail. Doc. 1 ¶ 17 (Mr. Russell suffers stage 3 prostate cancer, diabetes, high blood pressure, and an umbilical hernia and

remains incarcerated); *id.* ¶ 18 (Mr. Hubbard suffers from diabetes and asthma and remains incarcerated); *id.* ¶ 18 (Mr. Harry White suffers from a heart murmur and remains incarcerated); *id.* ¶ 20 (Mr. Smelley suffers from Sickle Cell Disease, hypertension, and diabetes and remains incarcerated); *Id.* ¶ 23 (Mr. Courtney White suffers from high blood pressure and high cholesterol).

Social distancing—the single most essential step in stopping the spread of COVID-19—cannot be accomplished in the Jail. *See, e.g., id.* ¶¶ 8, 11, 12, 37, 41, 69, 70, 126. Defendants’ claims that they have “taken numerous measures to ensure the safety and welfare of the inmates and its staff, in accordance with CDC guidelines,” Doc. 10 at 2, is nothing more than *ipse dixit*. Defendants offer no supporting documentary evidence to refute the 13 declarations offered in support of Plaintiff’s emergency motion and Complaint demonstrating that the precautions necessary to stop the spread of the virus are *not* being undertaken. *See, e.g.,* Doc. 1 ¶ 67 (detainees are housed in units that feature two-person cells and four-person cubicles); *id.* ¶¶ 69–70 (detainees congregate in common areas where it is impossible to maintain a distance of six feet from their peers at the current population); *id.* ¶ 65 (detainees entering the Jail are quarantined for three days, in violation of CDC standards); *id.* ¶¶ 69, 73, 79, 87 (detainees have no access to hand sanitizer, and jail staff deny detainees’ requests to receive additional bars of soap or other cleaning supplies throughout the week); *id.* ¶ 78 (detainees have been

forced to resort to creating their own cleaning solutions to supplement the inadequate Simple Green solution that Defendants provide); *id.* ¶ 80 (Defendants have not replaced the paper and cloth masks they provided to detainees nearly a month ago); *id.* (detainees never received gloves); *id.* ¶¶ 66, 72, 81 (although more than 170 jail employees have tested positive for COVID-19, jail staff and trustees do not consistently wear personal protective equipment when interacting with detainees).

Because Plaintiffs and the class members they seek to represent remain at imminent risk of death or serious injury, this Court should grant Plaintiffs' Motion Emergency Consideration. This Court should further issue a temporary restraining order and preliminary injunction ordering the relief requested in Plaintiffs' Motion.

Respectfully submitted,

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*Applications for admission forthcoming

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CERTIFICATE OF SERVICE

I affirm that the forgoing was filed through this Court's electronic filing system.

/s/ A. Dami Animashaun